IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 305 OF 2005

SHRI JOHN DINIZ,CUNCOLIM GOA. ....Petitioner

Versus

SMT.EPIFANIA FERNANDES AND ANR., ...Respondents

Shri Nitin Sardesai,Advocate for the Petitioner.

Coram:- R. M. LODHA, J.

Date:- 21st October, 2005

P.C.:

Heard.

It is not in dispute that the petitioner (defendant No.1 in the present Suit) filed a suit earlier being R.C.S. No.351/1988/C wherein he prayed that the compound wall constructed by the respondent No.1 (plaintiff in the present suit and defendant in that suit) be demolished. That suit was dismissed. The Appeal was preferred by the present petitioner, but that also came to be dismissed. Despite having been unsuccessful in his earlier suit when the petitioner (defendant No.1) sought to construct the compound wall by demolishing the compound wall erected by the plaintiff in Survey No.526/8, the plaintiff (Respondent No.1) filed suit for permanent injunction against the present petitioner. She made an application for temporary injunction. That application came to be rejected by the trial Court. The matter was carried in appeal. The appeal Court in the backdrop of decision in the suit No.351/1988/C filed by the present petitioner held that the present respondent No.1 has been able to make out prima facie case. The appeal Court also held the balance of convenience in favour of present respondent No.1. It also held that irreparable loss would be occasioned to the respondent No.1 (plaintiff) if the petitioner

(defendant No.1) was permitted to demolish the existing compound wall erected by the plaintiff. In my view, the interference by the appeal Court in the Order of the trial Court was proper and cannot be said to suffer from any error of law or jurisdiction.

No case for interference is made out in extraordinary jurisdiction.

Writ Petition is dismissed in limine.

R. M. LODHA, J.

sl.